

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SONNY JAMES MORALES,  
Petitioner,  
v.  
A. COVELLO,  
Respondent.

Case No. 1:20-cv-00894-JDP

ORDER TO SHOW CAUSE WHY MOTION  
FOR STAY AND ABEYANCE SHOULD  
NOT BE DENIED

RESPONSE DUE IN SIXTY DAYS

ECF No. 1

Petitioner Sonny James Morales, a state prisoner without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. This matter is before us for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). Here, petitioner states one fully exhausted claim for relief: that the evidence at trial was insufficient to support his conviction. ECF No. 1 at 5-6.

Also before us is petitioner’s motion for a stay and abeyance under *Rhines*. *Id.* at 40-46. Petitioner seeks to exhaust two additional claims before the state courts: (1) that the prosecutor failed to disclose exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963),

1 and (2) that petitioner received ineffective assistance of counsel at trial. *Id.* Because petitioner  
 2 has failed to demonstrate that he meets the requirements for a stay and abeyance under *Rhines*, we  
 3 will order him to show cause why his motion should not be denied.

#### 4 **Discussion**

5 “Staying a federal habeas petition frustrates AEDPA’s objective of encouraging finality  
 6 by allowing a petitioner to delay the resolution of the federal proceedings. It also undermines  
 7 AEDPA’s goal of streamlining federal habeas proceedings by decreasing a petitioner’s incentive  
 8 to exhaust all his claims in state court prior to filing his federal petition.” *Rhines v. Weber*, 544  
 9 U.S. 269, 277 (2005). Therefore, a “stay and abeyance should be available only in limited  
 10 circumstances.” *Id.* Under *Rhines*, a stay and abeyance of a habeas petition is available where a  
 11 petitioner can show good cause for his failure to exhaust his claims in state court, that his claims  
 12 are not plainly meritless, and that he has not engaged in abusive litigation tactics.<sup>1</sup> *Id.* at 278.  
 13 Upon this showing, the petition may be stayed while petitioner exhausts his claims at the state  
 14 level. Once a petitioner has exhausted his claims, he may return to federal court with his fully  
 15 exhausted petition.

16 Although the Supreme Court has not defined what constitutes “good cause” for a *Rhines*  
 17 stay, in the Ninth Circuit, “good cause turns on whether the petitioner can set forth a reasonable  
 18 excuse, supported by sufficient evidence, to justify” the failure to exhaust.<sup>2</sup> *See Blake v. Baker*,

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19 <sup>1</sup> Although petitioner exclusively seeks a stay under *Rhines*, an alternative procedure for the stay  
 20 and abeyance of habeas petitions exists in our circuit under *Kelly v. Small*, 315 F.3d 1063, 1070-  
 21 71 (9th Cir. 2002). However, a stay under *Kelly* “does nothing to protect a petitioner’s  
 22 unexhausted claims from untimeliness.” *See King v. Ryan*, 564 F.3d 1133, 1141 (9th Cir. 2009).  
 23 To be timely under *Kelly*, his new claims must either (1) meet AEDPA’s statute of limitations  
 24 requirements, *see* 28 U.S.C. § 2244(d) or (2) “relate back” to the claims contained in the original  
 25 petition that were exhausted at the time of filing. *See King v. Ryan*, 564 F.3d 1133, 1143 (9th Cir.  
 26 2009). A claim that simply arises from “the same trial, conviction, or sentence” does not  
 27 necessarily relate back to the initial claims. *See Mayle v. Felix*, 545 U.S. 644, 659 (2005). To  
 28 “relate back,” the new claim must share a “common core of operative facts” with the claims in the  
 pending petition. *Id.* Here, petitioner has waited until nearly the end of the federal statute of  
 limitations period to file his federal habeas petition and his new claims do not appear to relate  
 back to his original claim. Therefore, a stay under *Kelly* would not likely provide petitioner the  
 relief he seeks.

<sup>2</sup> Notably, “the first element of the *Rhines* test can easily be established to the extent [petitioners]  
 were without counsel” during the period relevant to state-level exhaustion in post-conviction

1 745 F.3d 977, 980-82 (9th Cir. 2014). However, “[a]n assertion of good cause without  
2 evidentiary support will not typically amount to a reasonable excuse justifying a petitioner’s  
3 failure to exhaust.” *Id.* at 982. Sister courts within our circuit have required, at a minimum, a  
4 showing of some “circumstance over which [a petitioner] had little or no control” that prevented  
5 him or her from asserting the unexhausted claim in state court. *Riner v. Crawford*, 415 F. Supp.  
6 2d 1207, 1211 (E.D. Nev. 2006); *see Hernandez v. Sullivan*, 397 F. Supp. 2d 1205, 1207 (C.D.  
7 Cal. 2005) (adopting the “good cause” standard of procedural defaults in which “a petitioner  
8 ordinarily must show that the default resulted from an objective factor external to the petitioner  
9 which cannot fairly be attributed to him”).

10 Here, petitioner states that he had good cause for his failure to exhaust his claims because  
11 his access to his prison’s law library has been restricted since March 2020 due to the COVID-19  
12 pandemic. ECF No. 1 at 41. Although the recent restriction on petitioner’s access to the law  
13 library is unfortunate, petitioner has provided no reasonable excuse, supported by sufficient  
14 evidence, for his failure to exhaust his claims in a timely manner. Petitioner was convicted of his  
15 crimes and sentenced to prison in January 2016, *id.* at 1, and the factual predicates of petitioner’s  
16 unexhausted claims were discoverable at the time of his trial in 2015. Petitioner provides no  
17 insight into any circumstances that may have prevented his more than three-year delay in seeking  
18 to exhaust these claims. Moreover, petitioner has failed to directly address the second and third  
19 requirements of *Rhines*—that his claims are not plainly meritless and that he has not engaged in  
20 abusive litigation tactics.

## 21 Order

22 Within sixty days of the date of service of this order, petitioner is ordered to show cause  
23 why his motion for a stay and abeyance should not be denied. Petitioner is directed to address all  
24 three requirements of *Rhines* in his response.

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28 proceedings. *Dixon v. Baker*, 847 F.3d 714, 722 (9th Cir. 2017).

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2 IT IS SO ORDERED.

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4 Dated: July 1, 2020

  
UNITED STATES MAGISTRATE JUDGE

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